

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

-----X	
DAVIS INTERNATIONAL, LLC, HOLDEX,	:
LLC, FOSTON MANAGEMENT, LTD, and	:
OMNI TRUSTHOUSE, LTD,	:
	:
	:
Plaintiffs,	:
v.	:
	:
NEW START GROUP CORP., VENITOM	:
CORP., PAN-AMERICAN CORP., MDM	:
BANK, URAL-GORNO METALURAGICAL	:
COMPANY, EVRAZ HOLDING, MIKHAIL	:
CHERNOI, OLEG DERIPASKA, ARNOLD	:
KISLIN, MIKHAIL NEKRICH, and	:
ISKANDER MAKMUDOV,	:
	:
Defendants.	:
-----X	

Case No. 04-1482-GMS

**APPENDIX TO DEFENDANTS'  
OPENING BRIEFS IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

**Volume 5 of 13**

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**PLAINTIFFS'  
ORAL ARGUMENT  
SUBMISSIONS**

## GOK BANKRUPTCY LITIGATION

	Trial court	Appellate Instance of the same court	Cassation Court	SAC
Order	March 30, 2000 Decision appointing Kozyrev arbitrazh manager of GOK.	Appeal prohibited Art 160 (1) APC 1995; Art 55(3) of the Federal Law "On Insolvency (bankruptcy)"	Appeal prohibited Art 179(1) APC 1995; Art. 55(3) of the Federal Law "On Insolvency (bankruptcy)"	Application for protest not permitted Art. 191 (1) APC 1995; Art 55(3) of the Federal Law "On Insolvency (bankruptcy)"
Corrupt Purpose	Appointment allows defendants to control the bankruptcy proceedings.			
Record	Tel. 19/10/2000, Dec. 15/2000, Ex. 52. Zanadkorov Dec. 17/2000, Ex. 46. Pl. 1/2000, 28. Complaint 1/387-390			
Order	August 15, 2000 Decision changing the date of the hearing on Kozyrev's appointment as external manager from September 27, 2000 to August 22, 2000	Appeal prohibited Art 160 (1) APC 1995; Art 55(3) of the Federal Law "On Insolvency (bankruptcy)"	Appeal prohibited Art 179(1) APC 1995; Art. 55(3) of the Federal Law "On Insolvency (bankruptcy)"	Application for protest not permitted Art. 191 (1) APC 1995; Art 55(3) of the Federal Law "On Insolvency (bankruptcy)"
Corrupt Purpose	Rescheduling expedited takeover of GOK and prevented legitimate creditors from objecting to Kozyrev's appointment and appealing his decisions.			
Record	Tel. 19/10/2000, Dec. 17/2000, Ex. 105. Ashtumina Dec. 1/00. Bukharin Dec. 11/2000, Ex. 39. Zanadkorov Dec. 18/2000, Ex. 35.			

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	Trial court	Appellate Instance of the same court	Cassation Court	SAC
Order	August 22, 2000 Order installing Kozyrev as external manager of GOK and failing to address the arguments of various GOK creditors that the Lebaut transaction was a sham, that the GOK-Svyatogor transaction was entered in violation of Russian law on interested transaction and the shareholders' offer to pay GOK's debt.	Only appealable issue is appointment of Kozyrev  January 15, 2001 Omnibus appeal of Leneks and OOO Nexis dismissed for lack of standing.	June 7, 2001 Appeal Dismissed	Application for protest allowed only as to appointment of Kozyrev Art 160 (1), 179(1), Art 191 (1) APC 1995
Corrupt Purpose	Introduction of external management wrested control of GOK from the shareholders. Omitting references to the arguments regarding the Lebaut transaction and the shareholders' offer to pay GOK's debt and thus avoid bankruptcy made the decisions unappealable.	Kozyrev's rejection of claims after he became external manager prevented appeal and secured defendants' control over the bankruptcy.		
Record	Ashikhmina Dec 17-10, Ex 26. Telyukina Dec 11-18-19, 21-34, 37-48, 57-67, Ex 27. Trautman Dec 11-18. Zaharvov Dec 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194. Complaint 194.	Telyukina Dec 11-18-19, 21-34, 37-48, 57-67, Ex 27.		

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	Trial court	Appellate Instance of the same court	Cassation Court	SAC
Order	February 19, 2001 Decision denying complaint of GOK creditors Leneks, OOO Nexis, Northwest systems Ltd. and Nexis Products LLC, challenging Lebut's wrongful inclusion in the register.	April 19, 2001 Decision dismissing appeal of Nexis Products LLC.	July 12, 2001 Cassation appeal of Nexis Products LLC was dismissed for procedural reasons.	Application for protest allowed Art 160 (1), 179(1), 191 (1) APC 1995
Corrupt Purpose	This decision ensured that the defendants, through their ownership of the false debt, would hold the majority vote at the creditors meeting, thereby guaranteeing passage of the Sham Settlement Agreement.	Dismissal perpetuated the defendants' control through their ownership of the false debt.	The court's erroneous decision served no purpose other than to prevent legitimate creditors from engaging in further challenges to the false debt.	
Record	Telyukina Dec. ¶¶ 41-46, Ex 55, Ashikhmina Dec. ¶¶ 34, Ex 32, Zanaadvorov Dec. ¶¶ 111, Ex 64.	Telyukina Dec. ¶¶ 41-46, Ex 55, Ashikhmina Dec. ¶¶ 34, Ex 32, Zanaadvorov Dec. ¶¶ 111, Ex 64.	Telyukina Dec. ¶¶ 37-46, Ex 58, Ashikhmina Dec. ¶¶ 15-16, Ex 33, 34, Zanaadvorov Dec. ¶¶ 111, Ex 65.	
Order	March 23, 2001 Decision approving Kozyrev's refusal to include Polyprom in the creditors' register.	Appealable in light of Resolution of the Constitutional Court of Russia dated March 12, 2001	Appealable in light of Resolution of the Constitutional Court of Russia dated March 12, 2001	Application for protest allowed Art 160 (1), 179(1), 191 (1) APC 1995
Corrupt Purpose	Decision, which court delayed until after the final creditors' meeting on March 11, 2001, prevented plaintiffs from objecting to sham settlement.			
Record	Telyukina Dec. ¶¶ 84-89, ¶¶ 96-102, Ex 120 Bukharin Dec. ¶¶ 38-42 Zanaadvorov Dec. ¶¶ 97-101			

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	Trial court	Appellate Instance of the same court	Cassation Court	SAC
Order	April 18, 2001 The court rejected Nexus Products LLC's objections to the inclusion of Sirius -- an assignee of certain Lebaute claims -- in the list of creditors.	Appealable in light of Resolution of the Constitutional Court of Russia dated March 12, 2001	Appealable in light of Resolution of the Constitutional Court of Russia dated March 12, 2001	Application for protest allowed Art 160 (1), 179(1), 191 (1) APC 1995
Corrupt Purpose	This decision ensured that the defendants, through their ownership of the false debt, would hold the majority vote at the creditors meeting, thereby guaranteeing passage of the Sham Settlement Agreement.			
Record	Telyukina Dec. 11, 2001, Ex. 51, Ashikhmina Dec. 13, Ex. 30			
Order	April 19, 2001 Decision accepting the Settlement Agreement terminating the GOK bankruptcy.	June 27, 2001 Decision dismissing the appeal on technical, procedural grounds.	August 21, 2001 Decision dismissing the appeal on technical, procedural grounds.	Application for protest allowed Art 191(1) APC 1995.
Corrupt Purpose	Sham settlement agreement brought defendants' scheme to a conclusion, as they were now able to control GOK outside the bankruptcy context.	Delivery of the plant to defendants.	Delivery of the plant to defendants.	
Record	Telyukina Dec. 11, 2001, Ex. 92, Ashikhmina Dec. 14, Ex. 36, Zavadvorov Dec. 12, Ex. 67, Zavadvorov Dec. 12, Ex. 80	Telyukina Dec. 11, 2001, Ex. 103, 108, Ex. 123, Ashikhmina Dec. 11, 2001, Ex. 38, Zavadvorov Dec. 12, Ex. 70	Telyukina Dec. 11, 2001, Ex. 25, Ashikhmina Dec. 11, 2001, Ex. 22, Zavadvorov Dec. 12, Ex. 71	

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	Trial court	Appellate Instance of the same court	Cassation Court	SAC
Order	September 18, 2001 Decision dismissing the complaint of Foston Management, erroneously concluding that the Lebaut transaction did not violate Russian law on large transactions.	Appealable under Art 145 of APC 1995.	Appealable under Art 161 of APC 1995.	Application for protest allowed under Art 180 APC 1995.
Corrupt Purpose	Dismissal ensured that the bankruptcy could not be challenged.			
Record	<del>September 18, 2001</del>			

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ENDNOTE

<sup>1</sup> Defendants' charts contain a footnote concerning other so-called avenues of appeal available to plaintiffs. See NKAZ Chart n. \*\*, GOK Chart 9.

In the first paragraph, defendants refer to a right to file a "supervisory application" to certain officials who in turn could file a "supervisory complaint" in the Supreme Arbitrazh Court to seek review of an "allegedly improper lower court decision." This is known as an application for a protest, which is similar to a petition for certiorari, and review is discretionary. Defendants' reference to "decision" is misleading. Pursuant to the 1995 Arbitrazh Procedural Code, an aggrieved party could only file an application to bring a protest to the Supreme Arbitrazh Court of final orders called "decisions" and a very limited number of intermediary orders. Art. 191 of the 1995 APC. The ruling of the Constitutional Court, dated January 14, 2000, referred to in this paragraph by defendants, did nothing to change that limitation. Similarly, while the March 12, 2002 ruling of the Constitutional Court lifted some of the limitations for appeal of intermediary orders in bankruptcy, it did not alter the provisions of Art. 191 of 1995 APC.

As for the second paragraph, plaintiffs agree that the 2002 Amendments to the APC provide a party aggrieved by an Order issued prior to January 1, 2003 with the ability to file an application for a protest prior to April 1, 2003. See Art. 292 of the 2002 APC. But these applications are granted only in the rarest of circumstances, and are only heard as a matter of discretion, not as of right, by the Supreme Arbitrazh Court. For example, in 2001, 16,867 applications to bring protests were filed and only 570 were accepted for consideration. Although a complete review of the protests accepted in 2001 has not been conducted, preliminary analysis indicates that almost no protests were accepted related to factual disputes.

As for the third paragraph, what defendants describe is not an appeal, but a collateral attack on a judgment based on newly discovered matters, which, as they state, must be made to "the court that rendered the decision." Moreover, the portion of the relevant statute cited by defendants, Article 312(1) of the 2002 APC, which permits collateral attacks based on new matters, such as "criminal actions of the person, taking part in the case, or his representative . . . or the criminal actions of the judge," requires that these actions be "established by a court sentence," i.e., a criminal conviction. See Art. 312(1) of the 2002 APC. Collateral attack to the same court that rendered a corrupt decision, coupled with a requirement that the corruption must first be "established by a court sentence," is not an meaningful opportunity for review.

**HOLDEX SHAREHOLDER LITIGATION**

<b><u>Action filed by GOK against Polyprom to invalidate the sale of shares from GOK Trading House to Polyprom and the subsequent sale to Holdex, and to return the shares to GOK Trading House</u></b>				
	<b>Trial Court</b>	<b>Appellate Instance of the Same Court</b>	<b>Cassation Court</b>	<b>Supreme Arbitrazh Court</b>
<b>Order</b>	<p><b>November 22, 2000</b> Decision of the Arbitrazh Court of the Republic of Kalmykia (KAC) granting the relief sought in the complaint of GOK against Polyprom and invalidating the contract whereby Polyprom purchased its shares of GOK. The court ordered the transfer of 1.21% of GOK shares owned by Holdex LLC to GOK Trading House.</p>	<p>Appealed directly to the Cassation Instance.</p>	<p><b>April 17, 2001</b> Decision of the Federal Court of the North Caucasus District reversing and remanding the case for further proceedings, instructing the KAC to properly investigate the case and join the owner of the shares as a party.</p>	N/A
<b>Corrupt Purpose</b>	<p>Holdex, the owner of the shares at that time (a matter of public record), was not named as a party and neither Holdex nor Polyprom, the defendant and the first buyer of shares, was notified of the hearing and thus its shares were ultimately re-registered in the name of US based defendant companies.</p>		<p>Not alleged.</p>	
<b>Record</b>	<p>Complaint at 438. Pl. Mem. at 83. Chernysky Dec. 11/10, 11, Ex. 6. Klymenov Dec. 11/20/22, Ex. 6. Rieger (Holdex) Dec. 11/8/10, Ex. 3.</p>		<p>Complaint at 421. Pl. Mem. at 84. Chernysky Dec. 11/11, 16, Ex. 7. Klymenov Dec. 11/21, 22, Ex. 7. Rieger (Holdex) Dec. 11/10, 11, Ex. 4.</p>	

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	Trial Court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court
Order	July 5, 2001 Decision of the KAC again ordering the shares returned to GOK Trading House.	September 10, 2001 Order of Kalmykia Arbitrazh Court granting Polyproprom's motion to join Holdex LLC as a party, and rescheduling the hearing on appeal for November 9, 2001.  November 9, 2001 Decision of the Appellate Instance of KAC affirming the KAC decision dated July 5, 2001. Holdex appeared as a party.	January 21, 2002 Decision of the Federal Arbitrazh Court for the Northern Caucasus District reversing for failure to properly review the circumstances of the case.	N/A
Corrupt Purpose	Holdex, the owner of the shares was not named as a party or notified of the hearing and thus its shares were ultimately re-registered in the name of US based defendant companies.	Affirmance allowed judicial theft of Holdex shares to proceed.	Not alleged.	
Record	Chervinsky Dec. ¶¶ 13, 15, Exs. 9, 18. Kleymentov Dec. ¶¶ 23, Ex. 8. Rieger (Holdex) Dec. ¶¶ 12, 13, 17, 19, Ex. 5.	Pl. Mem. at ¶ 84. Chervinsky Dec. ¶¶ 14-16, Ex. 10-11. Kleymentov Dec. ¶¶ 25, 26, Exs. 9, 10. Rieger (Holdex) Dec. ¶¶ 14, 15-20, Exs. 6, 7.	Chervinsky Dec. ¶¶ 16, Ex. 12. Kleymentov Dec. ¶¶ 28, Ex. 11.	

	Trial Court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court
Order	March 12, 2002 Decision of the KAC invalidating the sale of shares between GOK Trading House and Polyprom.	Appealed directly to Cassation Instance.	April 23, 2002 Order of the Federal Arbitrazh Court for the Northern Caucasus District dismissing the cassation appeal of Polyprom for procedural reasons.	Appeal possible.
Corrupt Purpose	Forged telegrams were submitted to the KAC indicating that Polyprom and Holdex had consented to conducting the hearing in their absence. Polyprom and Holdex shares were taken away without giving them an opportunity to defend.		Not alleged.	
Record	Complaints 1422, 1484. Pl. Mem. at 184. Chervinsky Dec. 17, Ex. 13. Kleymentov Dec. 127, Ex. 12.		Chervinsky Dec. 128, Ex. 14. Kleymentov Dec. 127, Ex. 13.	

Since plaintiffs filed their opposition papers, Polyprom successfully obtained reconsideration of their appeal in the Cassation Instance. The Cassation instance reversed and remanded, whereupon the pattern of corrupt decisions continued. Last week, on February 4, 2003 the Appellate Instance of the KAC affirmed the lower court's decision invalidating the sale between GOK Trading House and Polyprom.

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**FOSTON SHAREHOLDER LITIGATION**

Proceedings at the Solntsevo Intermunicipal Court: action filed by OAO Nizhnetagilskiy Metallurgicheskii Kombinat, OOO Inrossmet and ZAO Standart against, inter alia, Foston, to return the shares of GOK sold to Foston.					
	Trial court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court	
Order	September 29, 2002 Decision of Solntsevo Intermunicipal Court (SIC) ordering the transfer of almost 38 million (19.26%) of GOK shares owned by Foston, i.e., virtually all of Foston's shares in GOK, to the accounts of Nizhnetagilskiy Metallurgical Combinat, Inrossmet and Standard Trust. <sup>2</sup>	Case was appealed directly to the Cassation Instance.	March 30, 2001 Decision of the Moscow City Court reversing and remanding the case to SIC for rehearing by a different panel of judges because of failure to notify Foston, but not ordering the shares returned to Foston.	Application for protest not allowed.  APC Art. 177	
Corrupt Purpose	Foston was not notified of the proceedings so that its shares could be taken away without notice or protest and ultimately re-registered in the name of US based defendant companies.		38 million illegally taken shares were not returned to Foston, despite the finding of no notice.		
Record	Complaints filed: 1. By Kombinat, OOO Inrossmet and ZAO Standart, dated December 24, 2002, B. 19, 20. 2. By Foston, dated December 16, 2002, B. 39, 40. Affidavits dated December 16, 2002, B. 39, 40.		Complaints filed: 1. By Kombinat, OOO Inrossmet and ZAO Standart, dated December 24, 2002, B. 39, 40. 2. By Foston, dated December 16, 2002, B. 39, 40.		

<sup>2</sup> Prior to the first appeal, a number of ancillary proceedings occurred in the trial court. Upon Foston's accidental discovery of the theft and inquiry into the matter, the trial court was unable to produce a record, stating that the docket had been stolen from the court, which was subsequently the subject of criminal investigation. Upon an application by Foston, the trial court, after locating some of the records, partially restored the record in the case and reinstated the limitations period for Foston to file an appeal. See *Ashikhmina*, Dec. 137, Ex. 18; *Kleymentov*, Dec. 169, Ex. 33.

	Trial Court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court
Order	November 30, 2001 Decision of SIC holding that it does not have jurisdiction to hear the case, dismissing the case and leaving the decision of SIC dated September 29, 2000 in force. <sup>3</sup>	May 22, 2002 Decision affirming the decision of SIC in its entirety.	August 8, 2002 Decision reversing and remanding the case to the SIC for a new hearing.	N/A
Corrupt Purpose	The court, while holding that it did not have jurisdiction when it divested Foston of almost all of its shares in GOK, refused to reverse its prior (admittedly jurisdictionally improper and unlawful) decision.	Refusal of the court to return the illegally taken shares showed clear bias and corruption of the court, which prompted the Prosecutor of the City of Moscow to file a protest to the Presidium of the Moscow City Court.	Not alleged.	
Record	Plavchenko at 84. Ashikhmina Dec. 11/20/01, 43, 46, 51; Ex. 10. Kleymenov Dec. 11/22/01, 76; Exs. 44, 45.	Plavchenko at 84. Ashikhmina Dec. 11/20/01, 43, 46. Kleymenov Dec. 11/25/01, 46.	Ashikhmina Dec. 11/27/01. Kleymenov Dec. 11/27/01.	
	Trial Court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court
Order	November 4, 2002 Decision granting Foston's motion to re-register shares in Foston's name.			
Corrupt Purpose	Decision in Foston's favor impossible to execute upon because persons responsible refuse to re-register shares. End result is the same: Foston's shares remain in the possession of US based defendant companies.			

<sup>3</sup> Again, there were ancillary proceedings before this decision could be appealed. After receiving numerous communications purportedly sent by Foston's attorney waiving its right of appeal, the court stayed the cassation appeal. The stay was lifted when Foston's legitimate attorney, Ashikhmina submitted a signed power of attorney. See Ashikhmina Dec. 11/26/01, 46-53, Exs. 41, 42, 43, 47, 23.

<u>Proceedings at the Sverdlovsk Arbitrazh Court: parallel action filed by OAO Nizhnetagil'skiy Metallurgicheskii Kombinat, OOO Inrosmet and ZAO Standart against, inter alia, Foston, to return the shares of GOK sold to Foston.</u>				
	Trial Court	Appellate Instance of the Same Court	Cassation Court	Supreme Arbitrazh Court
Order	December 20, 2002 Oral motion to dismiss case against Foston for lack of service denied. Case was subsequently adjourned again until June 3, 2003.	Appeal prohibited. Art. 160(1) APC 1995, Art. 55(3) of the Federal Law "On Insolvency (bankruptcy)."	Appeal prohibited. Art. 179(1) APC 1995, Art. 55(3) of the Federal Law "On Insolvency (bankruptcy)."	Application for protest not permitted. Art. 191(1) APC 1995, Art. 55(3) of the Federal Law "On Insolvency (bankruptcy)."
Corrupt Purpose	The practice of proceeding without service continues, and Foston continues to be prejudiced, while its shares remain in defendant companies in the US.			
Reference	Asnikhmina Dec. 14, 2004. Exs 21, 41.			



DAVIS SHAREHOLDER LITIGATION

Other than the instant RICO case, defendants' theft of the Davis shares has not been litigated.

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